
CHAPTER 3

WORKER RIGHTS: COOPERATION AND LABOR LAW ENFORCEMENT

SUMMARY OF FINDINGS

For the first time, the North American Agreement on Labor Cooperation (NAALC) established by NAFTA has created North American cooperation on fundamental labor issues, and has resulted in transparency and public debate on key labor issues:

- The Canadian, Mexican, and U.S. governments have initiated cooperative efforts on a variety of labor issues, including occupational safety and health, employment and training, industrial relations, worker rights, and child labor and gender issues.
- These joint efforts have included training and technical assistance to address occupational safety and health concerns; site visits to provide concrete information on best practices; and interaction between government, labor, business and academia to promote the protection of women and children in the workforce.

The NAALC public submission process provides organizations and individuals the opportunity to present to one of NAFTA governments allegations that another NAFTA government is not abiding by its NAALC obligations:

- The submission process subjects member governments to public and international attention for alleged violations of labor laws.

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- Public submissions have led to public hearings, Ministerial consultations, and action plans to redress concerns.
- The submission process has resulted in such outcomes as recognition of a union not previously recognized and permitting secret union ballots at two companies where union votes had previously been monitored.

Mexico has increased oversight and enforcement of its labor laws since NAFTA and the NAALC went into effect:

- Between 1993 and 1996, Mexico's Secretariat of Labor and Social Welfare (STPS) reports increased funding for enforcement of labor laws by almost 250 percent.
- STPS focused its inspections on verifying compliance with child labor laws; STPS undertook over 48,000 inspections in 1996, with over 9,600 targeted to address compliance with child labor laws.
- Mexico reports a 30 percent reduction in the number of workplace injuries and illnesses between 1994 and 1996.
- STPS implemented revised occupational safety and health regulations on April 21, 1997, for the first time covering workers in certain sectors and requiring additional protections on the part of employers.
- The Mexican Supreme Court issued two significant decisions involving freedom of association in 1996; the Court unanimously concluded in two cases that state laws in the states of Jalisco and Oaxaca that prohibited more than one union per government entity were unconstitutional. The Court's decisions are a significant step in the protection of the freedom of association and right to organize.

INTRODUCTION

The North American Agreement on Labor Cooperation (NAALC), which entered into force along with NAFTA in 1994, provides a unique, trilateral mechanism to improve working conditions and living standards in North America. The agreement seeks to promote fundamental labor standards, compliance with labor laws, and the enforcement of those laws in each country.

The NAALC has contributed to transparency and public debate on labor law and enforcement issues that, to a large extent, did not exist before. In fact, neither bilateral nor trilateral cooperative efforts to improve worker rights were nearly as pronounced as they have been since NAFTA and the NAALC.

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The NAFTA governments have sought to implement the shared vision and common commitments embodied in the NAALC both through the establishment of institutions for the exchange of ideas and information on key labor issues and by pursuing substantive dialogue. In areas such as occupational health and safety, job training, industrial relations, workers rights, child labor and gender issues, the NAALC has already set a firm foundation on which North American-wide efforts to address important labor concerns and improve working conditions will be built.

Moreover, the NAALC has provided an effective channel for members of the public and interested groups to highlight their concerns that a NAFTA government may not be meeting its obligations. This submission process has led to concrete results in several cases, particularly with respect to ensuring freedom of association, *e.g.*, reversing a decision denying union registration and allowing secret ballot union elections. These submissions have led to consultations at all levels of government, including at the ministerial level.

Since 1994, Mexico has announced a number of steps to bolster the enforcement of its labor laws. They include increased resources devoted to federal enforcement and several initiatives aimed at enhancing worker rights and improving working conditions.

THE NORTH AMERICAN AGREEMENT ON LABOR COOPERATION

Overview of the NAALC

The NAALC seeks to improve working conditions and living standards, promote eleven fundamental labor principles,⁷⁰ encourage better understanding of labor law and institutions in each Party, promote tripartite (government, business, and labor) initiatives on labor-related matters, foster transparency in the administration of each government's labor law, and promote compliance with and effective enforcement of labor law by each Party.

Each of the three governments has obligated itself through the NAALC to:

- ensure that its labor laws and regulations provide for high labor standards and to strive to improve those standards;
- promote compliance with and effectively enforce its labor law through appropriate government action;

⁷⁰ The fundamental labor principles are freedom of association and protection of the right to organize; the right to bargain collectively; the right to strike; prohibition of forced labor; labor protections for children and young persons; minimum employment standards; elimination of employment discrimination; equal pay for women and men; prevention of occupational injuries and illnesses; compensation in cases of occupational injuries and illnesses; and protection of migrant workers.

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- ensure that persons with a legally recognized interest under its law in a particular matter have appropriate access to administrative, quasi-judicial, judicial or labor tribunals for the enforcement of labor laws and ensure that such proceedings are fair, equitable and transparent;
- ensure that its laws, regulations, procedures, and administrative rulings are promptly published or made available to the public; and
- promote public awareness of its labor law.

The agreement established a trilateral Commission for Labor Cooperation comprising a Ministerial Council and a Secretariat. The Secretariat, headed by an Executive Director, provides administrative support to the Council. The Secretariat is staffed by professionals drawn from all three countries. As discussed below, the Secretariat is providing valuable research and analysis of labor law systems and the operation of labor markets in the three countries.

The NAALC requires each party to establish a new governmental unit called a National Administrative Office (NAO). Each NAO serves as a point of contact for other agencies of its own government, for the two other NAOs, and for the Secretariat. The NAOs also provide information requested by the various bodies established under the NAALC. In addition, each NAO receives and evaluates public submissions alleging that another NAFTA government has failed to enforce its labor law and may pursue those matters with the other NAOs. The submissions filed to date -- and the results thereof -- are detailed below.

The NAALC provides a forum for inter-governmental consultations, including consultations at the ministerial level, for considering specific labor issues, and for resolving disputes when cooperative measures prove inadequate. The ministerial consultations to date have resulted in public forums and reports that provide transparency on labor issues and create opportunities for the submitters and other members of the public to address their concerns directly to the governments responsible for enforcement. If matters cannot be resolved through ministerial consultations, a government may call for the establishment of an Evaluation Committee of Experts (ECE).

An ECE is an independent, *ad hoc* body assigned to analyze each party's labor standards or enforcement practices in situations where those practices are both trade-related and covered by the labor law of the governments concerned. ECE reports are forwarded to the Council for consideration. If the parties are unable to resolve the matter after an ECE evaluation, and if the matter involves certain specified labor standards,⁷¹ a government may invoke the agreement's dispute settlement procedures to determine whether another government failed to enforce those standards.

⁷¹ Occupational safety and health, child labor, or minimum wage standards.

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As with an ECE, the matter must be trade-related and subject to coverage by the labor laws of both parties.

In such cases, an arbitral panel reviews the matter and issues a report containing its findings, its determination as to whether there has been a persistent failure to enforce the law effectively, and recommendations for resolution of the dispute. If the panel finds against the defending party, it normally will recommend that the party adopt and implement an “action plan” sufficient to remedy the pattern of non-enforcement. A government’s failure to implement an approved action plan may lead to a monetary enforcement assessment. Failure to pay the assessment may lead to suspension of NAFTA tariff benefits or, in the case of Canada, an enforcement action in Canadian courts.

Establishment of NAALC Institutions

The Council

The Council, comprised of each country’s labor minister, is the governing body of the Commission for Labor Cooperation. It meets at least once a year, and reviews and approves the cooperative work plans and examines progress made on particular initiatives, including ongoing ministerial consultations prompted by public submissions.

The Secretariat

The Secretariat assists the Council in exercising its functions. For example, it recently initiated a program to review the labor law and operation of the labor markets in the three NAFTA countries. The reviews will be completed this year, and are discussed below. In addition, the Secretariat planned a series of seminars on North American incomes and productivity. The first seminar was held in Dallas in February.

In addition to the current labor market data, the Secretariat publishes detailed studies on labor issues in the three countries, several of which are due to be published this year:

- A study on comparative labor law will analyze each of the eleven labor law principles contained in the NAALC on the basis of the agreement’s six obligations. The study will summarize pertinent labor law and standards in each country and address the application and enforcement of those laws.
- A study of North American markets will examine key labor market developments and indicators in a comparative context. The study will contain a description of the labor market in each country over the past decade and projected future growth. The study will attempt to include data on changes in the employment patterns, underemployment, non-standard work, the informal economy, job insecurity, and distribution of income.

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- A study on standard and advanced practices in the garment industry will focus on firms operating in more than one country that combine good labor practices with strong competitiveness.

In addition, one of the submissions (discussed below) resulted in a ministerial directive to prepare a report focusing on the effects of sudden plant closings on freedom of association and the right to organize. That report was released in June. The study describes how the labor laws of each NAFTA country protect against the misuse of plant closings, and threats of plant closings, to deter union organizing, and examines recent experience in the administration of these laws.

As indicated, the Secretariat has arranged public seminars on key labor issues. The February seminar in Dallas focused on incomes and productivity. It was attended by representatives from labor organizations, employers, and academia across North America and focused on the linkages between incomes and productivity in North American labor markets.

National Administrative Offices

Each NAFTA government opened NAO offices on January 1, 1994. The Labor Department issued *Federal Register* notices establishing the U.S. NAO and relevant procedural guidelines on December 30, 1993⁷² and April 7, 1994.⁷³ The guidelines include procedures pertaining to the receipt and review of public submissions alleging the failure by Mexico or Canada to enforce its labor laws effectively, a public reading room, and cooperative activities.

The U.S. NAO is a component of the Department of Labor's Bureau of International Labor Affairs. It maintains a public reading room, which contains copies of submissions, public files, transcripts of hearings, *Federal Register* notices, reports, and other public information. In addition, the NAO established a fax-on-demand system and routinely places documents on its Internet website to assure access by the public.

In December 1994, the Secretary of Labor established a public advisory committee to provide advice to the U.S. NAO on the implementation of the NAALC. The advisory committee is comprised of 12 members drawn equally from labor organizations, employers, and academia.

⁷² 58 Fed. Reg. 69410 (1993).

⁷³ 59 Fed. Reg. 16660 (1994).

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NAALC Activities to Date

The NAALC creates a unique vehicle for tripartite cooperation aimed at promoting labor standards, compliance with labor laws, and the enforcement of those laws in each country. All three countries have been active participants in the NAALC's cooperative activities.

The degree and scope of cooperation among the three NAFTA countries on labor law matters since 1993 is without parallel and simply would not have been achievable without the NAALC. The NAALC has successfully brought together not just government representatives, but also representatives of labor organizations, employers, public interest groups, and other NGOs. The discussions initiated to-date, together with the exchange of technical assistance between the parties, should have a positive impact on labor law enforcement in North America over the long term. The range of cooperative activities are outlined below.

The NAALC also establishes an innovative mechanism under which complaints addressed to one NAFTA government from members of the public or private groups, including labor organizations can prompt a review of labor law enforcement in one of the other two countries. This mechanism has proved effective in fostering transparency and public awareness on matters of labor law enforcement in Mexico.

For example, the result of two cases discussed below brought before the U.S. NAO, each alleging the failure by Mexico to enforce its labor laws, was that secret ballot elections were held where previously the elections would have been in the presence of government representatives, the employer, and the union under "open ballot" procedures.

The public submission process has also helped to address other longstanding industrial relations practices in Mexico that have been used to restrict freedom of association and the right to organize. Faced with an ongoing U.S. NAO review and an imminent public hearing, the Sonora, Mexico Conciliation and Arbitration Board (CAB) reversed a decision denying union registration.

Cooperative Activities

The NAALC provides for various forms of tripartite cooperative activities, including exchanges of information, technical assistance, and consultations. The governments initially focused their cooperative efforts in the areas of occupational safety and health, and employment and training. More recently, the parties agreed to examine child labor and gender workplace issues. These cooperative activities have already contributed to the enforcement of labor law in Mexico, and should not be underestimated for their longer-term value.

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Initiatives on Industrial Relations and Worker Rights

Tripartite cooperation in the area of industrial relations and worker rights is of critical importance. It has been the principal focus of the public submissions to the U.S. and Mexican NAOs alleging failure to enforce labor laws. Cooperative activities in this area initially focused on providing fora for government officials, employers, workers, and academics in the three countries to better understand the operation of the labor relations systems of the three NAFTA countries, as well as to exchange views on the effectiveness of those systems. The programs were designed to encourage participation among employer and worker representatives, and have prompted useful exchanges on building constructive labor-management relations. These programs provide for public discussion and increased accountability regarding enforcement of labor law in Mexico. Examples include:

- Representatives of government, labor, business, and academia from the three countries held a three-day series of workshops on labor law and practice in the United States in 1994. The workshops focused on effective cooperative labor-management practices.
- A follow-up conference examined labor law and industrial relations, and the conference results were disseminated to the public.
- The right to organize and freedom of association was the topic for a U.S.-hosted government-to-government workshop in 1995. The workshop was designed to address industrial relations issues raised in the first two submissions before the U.S. NAO (see below) and focused on the application and implementation of each country's labor laws regarding the right to organize, union representation elections, protection against anti-union discrimination, remedies and procedural guarantees, and union democracy.
- A follow-up workshop on the same subject, also held in the United States in 1995, focused on the government's role in the administration and enforcement of labor laws and the establishment of unions, unions' and employers' strategies regarding union organizing, issues involving labor unions and labor management relations, and collective bargaining.
- Representation rights, the effects of global competition and NAFTA on the workplace, and the changing role of women in the workplace were the subject of discussion by representatives from labor, business, academia, and government at a Canadian-sponsored conference in 1996 on industrial relations for the 21st century.

Occupational Safety and Health Initiatives

The three governments have focused a major portion of their cooperative efforts on occupational safety and health issues, emphasizing the development and maintenance of effective programs to eliminate safety and health hazards in all three countries. They pursued this objective through

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education and by providing technical assistance in key safety and health areas. Their focus has been on strengthening safety and health standards; enhancing inspection programs; heightening awareness between workers and employers on issues in high hazard industries; creating links between experts in government, industry, and labor across North America on safety and health issues of mutual interest; and identifying and collecting statistical data to evaluate the impact of worker safety and health conditions on economic activity. These programs have assisted the Mexican government in its efforts to improve protection of workers from serious occupational hazards.

- The three governments held tripartite hazard recognition training seminars in 1994 to increase the ability of enforcement personnel to identify hazards, make recommendations for abatement, and provide technical assistance to employers on how to prevent hazards. The programs included a course on laboratory procedures conducted as part of a “Sampling and Laboratory Analysis of Airborne Contaminants” project in which the U.S. Occupational Safety and Health Administration (OSHA) conducted training for STPS personnel; training on the use of air sampling equipment donated by Canada to STPS for its new industrial hygiene laboratory; a training session on “Safety and Health in the Construction Industry” conducted jointly by OSHA and STPS; and training on “Hazard Recognition for Industrial Hygienists,” in which OSHA and STPS instructors trained STPS personnel and private industry participants.
- Additional joint safety and health training programs included a course on principles of ergonomics, in which OSHA instructors joined their counterparts at STPS in providing technical instruction and an overview of relevant regulations; a course on biohazards conducted jointly by OSHA and STPS; training of medical doctors and engineers from the Mexican Institute of Social Security (IMSS) in industrial hygiene; and instruction on accident inspections conducted by OSHA and STPS for IMSS personnel.
- Government representatives from the three countries held a seminar on occupational safety and health statistics in Mexico in 1994, in which they examined how each country gathered and analyzed data and shared methodology and best practices on occupational safety and health issues.
- In an effort to create a greater awareness of occupational safety and health hazards and the need for effective safety and health programs, each country hosted a major technical seminar in 1994 focusing on key industries. The United States hosted a seminar on the electronics industry, Mexico on the construction industry, and Canada on the petrochemical industry. The seminars were designed to foster an exchange of information on ways to reduce fatalities and injuries. Subjects of information exchange included recent research in occupational health, risk statistics and assessment, training methods, materials handling, safety and exposure standards, and community awareness.

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- The Canadian Center for Occupational Health and Safety (CCOHS) organized a seminar in Mexico City in 1995 to promote health and safety in the workplace and to consider methods for enhancing the physical and mental health of working people. Representatives from OSHA participated to familiarize themselves with the CCOHS information resource system and to examine potential trilateral initiatives to disseminate occupational safety and health information.
- Representatives from the United States and Mexico attended Canada's annual meeting of senior occupational safety and health officials in 1995. Officials attending the meeting exchanged information on key safety and health issues and emerging safety and health trends.
- The three governments conducted study tours in 1995 and 1996 in the construction and petrochemical industries. The seminars and study tours brought together experts from varying disciplines to share their views of best practices for improvement of safety and health measures in their industries. All events involved tripartite representation, which allowed for meaningful participation of employers, workers, and governments in developing and implementing effective safety and health programs. Participants were encouraged to develop and implement "back home" plans for action in each country.
- The NAFTA parties dedicated June 2-6, 1997 as North American Occupational Safety and Health Week. In cooperation with labor organizations, employers, and interested non-governmental organizations, the three governments promoted occupational safety and health through brochures, exhibits, news releases, and other materials.

In January 1997, in part as a result of such cooperative activities, STPS issued revised occupational safety and health regulations. The new regulations, which entered into force on April 21, 1997, for the first time cover workers in forestry, agriculture and sawmills, as well as those who work with agricultural equipment and chemical products, such as pesticides and fertilizers; require that employers train workers on safety and health matters and inform them about work-related risks and preventive measures; strengthen protections for pregnant women and children; establish standards on biohazards, dangerous substances, and ergonomics; encourage the development and implementation of preventative occupational safety and health programs in enterprises; and authorize the establishment of "Private Verification Units" to lend technical assistance to enterprises in the enforcement of occupational safety and law regulations.

Employment and Training Initiatives

The NAALC's employment and training initiatives have focused on fostering awareness of key employment and job training issues, harmonizing key definitions, and promoting knowledge of effective programs. The idea has been to bring government, employer, and labor representatives together to share their expertise on matters such as developing worker skills, improving access to training, promoting fairness in employment, and ensuring security for displaced workers.

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These programs are important in light of the rapid pace of change in workplaces throughout North America, including new technology, greater use of non-standard work practices, and increased participation of women and minorities. The programs have allowed participants to share expertise on mutual areas of concern, to consider definitional comparability in the three countries, and to focus on effective policies and practices to enhance job training and employment opportunities.

- Mexico hosted a trilateral technical seminar in 1994 on micro-enterprises and the informal sector, two important sources of employment in Mexico.
- Mexico also convened a workshop on equality issues in the workplace in 1995, which provided an opportunity for U.S., Canadian, and Mexican participants to exchange information on improving equality in the workplace, with a special focus on working women. The seminar included discussion on legislation and other initiatives to eliminate discrimination in hiring and promotion, pay discrepancy, and sexual harassment.
- The Canadian NAO sponsored a workshop on continuous learning and development in the workplace held at the NAALC Secretariat in 1996. The workshop provided an opportunity for tripartite discussions regarding concepts, current initiatives, best practices, and major trends in the area of continuous learning, development, and skills acquisition.
- A government-to-government workshop on income security programs, held in Canada in 1996, provided an opportunity for government officials to exchange experiences and policies in the areas of unemployment, employment insurance, pensions and family benefits, workers' compensation, employment services and programs, and other related programs.
- Canada also hosted a tripartite seminar in 1996 on responding to the growth of non-standard work and changing work time patterns and practices. The seminar provided participants with the opportunity to exchange views on changes regarding new forms of work, definitions of non-standard work, legislation and policies regarding the treatment of non-standard work, effects of new work patterns on workers and employers, and current research.

Child Labor and Gender Initiatives

NAFTA governments have worked jointly to encourage governments, employers, labor representatives, and other interested organizations to address the critical issues of child labor and women in the workforce. While the level and extent of the problems faced by women and children in the workplace in the three countries may diverge due to economic, social, developmental, and structural differences, the nature of these problems and potential solutions cut across borders. Initial steps by the three governments under the NAALC in this area have focused on information exchange, best practices, and education. Next steps will include the development of action plans to encourage cooperative problem solving.

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- In February 1997, the U.S. NAO hosted a tripartite conference focusing on child and youth labor in North America. Conference participants examined innovations that seek to eliminate inappropriate participation of children in the workforce and explored ways that the three countries can improve conditions and safety for children and youth legally in the workplace. The conference provided a mechanism to educate the public and policymakers on the nature of child labor and the implications and social impact of child labor, focused attention on best practices and models to eliminate harmful child labor practices, and shared statistical information and demographics on child and youth labor in North America. Participants included representatives of government, labor, employers, and non-governmental organizations from the three countries.
- In April 1997, Mexico hosted a conference on women and work in the 21st century. The conference explored the status of working women in the three countries through a review of legislation, policy and programs; case studies of best practices; and innovations for the future. The conference brought together government, employer, and labor representatives from the three countries.

Oversight and Enforcement

In addition to providing a vehicle for increasing government accountability and public understanding of labor matters in the three countries, the NAALC creates a unique public submission procedure under which organizations and individuals may present to a NAFTA government allegations that another government is not meeting its obligations under the NAALC. Depending on the nature of the matter raised, a valid allegation may lead to consultations between national NAOs, ministerial consultations, an analysis by an ECE, or dispute resolution proceedings.

Generally speaking, NAO and ministerial consultations are effective tools to promote more effective enforcement of labor laws. Ministerial consultations have been an effective forum for providing transparency and focusing international attention on important labor law enforcement issues. The public submission process has led to concrete results as detailed below.

Submissions to NAOs

The U.S. NAO accepts for review any submission that raises issues relevant to another NAFTA government's labor law and that would further the objectives of the NAALC. The NAO considers each submission it accepts for review and issues a public report on its findings. The NAO engages in a rigorous fact-gathering process that includes obtaining relevant information from the other NAFTA governments; engaging experts to provide advice concerning relevant Canadian and Mexican labor law issues; and conducting hearings that afford the public, as well as the parties directly affected by the matter, the opportunity to present their views directly to the NAO. The NAO also routinely seeks input from employers on the issues raised in a submission.

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As of June 1997, the three NAOs had received a total of eight public submissions, of which seven submissions were filed with the U.S. NAO, and one with Mexico's NAO. All but the most recent submission, filed with the U.S. NAO, have involved industrial relations issues, specifically concerns about freedom of association and the right to organize.

- The first and second submissions were filed with the U.S. NAO by the International Brotherhood of Teamsters and the United Electrical, Radio, and Machine Workers of America, respectively.⁷⁴ Both submissions alleged that workers at the Mexican subsidiaries of two American corporations had been deprived of their freedom of association and the right to organize because they were not permitted to establish unions of their choice. The NAO accepted both cases for review, held hearings on the allegations, and determined that there was insufficient information to establish that the Government of Mexico had failed to enforce its labor laws. Notwithstanding this finding, the NAO recommended that the United States, Mexico, and Canada develop joint cooperative programs to address the freedom of association and the right to organize issue raised in the submissions. As discussed above, in response to this recommendation the U.S. hosted two workshops to address these issues.
- A third submission was filed with the U.S. NAO by four worker rights and human rights organizations, headed by the International Labor Rights Education and Research Fund.⁷⁵ The submission concerned the operations of a U.S. subsidiary in Mexico and involved issues of freedom of association and the right to organize. Following the information gathering process and a public hearing in San Antonio, Texas, the U.S. NAO issued a report concluding that the submission raised serious questions concerning the workers' ability to obtain recognition of an independent union through the registration process. The NAO recommended ministerial consultations on the issue of union registration in Mexico. In turn, the U.S. Secretary of Labor requested ministerial consultations on the issue of union registration.

The ministerial consultations resulted in an agreement to conduct a series of seminars and conferences, an internal study on union registration by the Mexican authorities, and a series of meetings between the Mexican authorities and the parties concerned. The purpose of these activities was to elicit a public discussion of systemic problems with the union registration process in Mexico, provide the submitters an opportunity to address their concerns directly to the Mexican government, and bring about an open exchange for seeking solutions to the problem.

Each of the steps identified in the ministerial consultations has been completed. Three public seminars were conducted in 1995-1996 which addressed issues of union registration, certification, elections, recognition, and internal union organization; a study was prepared and made public in

⁷⁴ U.S. NAO Submissions No. 940001 and 940002, (Feb. 14, 1994).

⁷⁵ U. S. NAO Submission No. 940003, (Aug. 16, 1994).

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May 1996 on Mexican labor law regarding union registration and its implementation. In addition, the U.S. NAO commissioned a study on Mexican CAB cases involving unjustified dismissals. Upon the completion of the work program as set forth in the Ministerial Consultations Agreement, the U.S. and Mexico issued public reports summarizing the results. The report of the U.S. NAO was released on June 4, 1996.

- The United Electrical, Radio, & Machine Workers presented a submission to the U.S. NAO regarding a subsidiary of a U.S. corporation in Mexico.⁷⁶ The submission was subsequently withdrawn.
- Three labor and human rights groups -- the International Labor Rights Fund (ILRF), Human Rights Watch/Americas, and the Mexican National Association of Democratic Lawyers -- presented a submission to the U.S. NAO raising issues of freedom of association for federal workers at the Ministry of the Environment, Natural Resources and Fisheries in Mexico and questioning the impartiality of the Mexican labor tribunal responsible for labor relations determinations in the federal sector.⁷⁷ The U.S. NAO accepted the submission for review on July 29, 1996 and conducted a hearing in Washington, D.C. on December 3, 1996. The NAO issued a report on January 27, 1997 noting that the freedom of association issues raised in the submission had been the subject of ongoing review and interpretation by the International Labor Organization and that conflicting views existed concerning the legal status of international treaties under Mexican law. As a result, the NAO recommended ministerial consultations for the purpose of examining the relationship between international treaties, constitutional provisions, and domestic law. The Secretary of Labor has initiated consultations on this matter with Mexico and a resolution is expected shortly.
- A further submission to the U.S. NAO was presented by the Communications Workers of America, the Union of Telephone Workers of the Republic of Mexico and the Mexican Federation of Unions of Goods and Services Companies.⁷⁸ The submission raised issues of freedom of association for workers attempting to organize a union at a plant in Cananea, Sonora, Mexico. The company produces and markets high-tech keyboards for computers and computer games. This submission is particularly notable because it represents the first time that a Mexican union turned to the U.S. NAO. The U.S. NAO accepted the submission for review on December 10, 1996. A hearing scheduled on April 18, 1997, was canceled after the NAO was informed that the parties were withdrawing their submission. The submitters concluded that the submission was moot because the issues had been satisfactorily addressed by the authorities in Mexico. Registration of the union and recognition of its officers, which had been denied by the local CAB

⁷⁶ U.S. NAO Submission No. 940004, (Sept. 12, 1994).

⁷⁷ U.S. NAO Submission No. 9601, (June 13, 1996).

⁷⁸ U.S. NAO Submission No. 9602, (Oct. 11, 1996).

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on the grounds that another union already existed at the facility, were subsequently granted. In addition, workers who had allegedly been dismissed from employment because of their union activities and had their reinstatement cases denied, were granted new hearings. The hearings have been scheduled for August 1997.

- The most recent submission filed with the U.S. NAO was filed by Human Rights Watch, International Labor Rights Fund, and the Mexican National Association of Democratic Lawyers on May 16, 1997 and raised issues of pregnancy-based gender discrimination in Mexico's maquiladora sector.⁷⁹ The NAO will determine whether to accept the submission for review by July 14, 1997.

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- The only submission to Mexico's NAO was filed by the Mexican Telephone Workers Union on February 9, 1995 and concerned the closure of a subsidiary of a U.S. corporation in San Francisco, California shortly before a union representation election was scheduled to take place.⁸⁰ The Mexican NAO reviewed the submission and issued a public report on May 31, 1995, requesting ministerial consultations on the effects of such a plant closure on union organizing efforts.

The ministerial consultations were held and resulted in several actions, including: (1) the United States agreed to keep Mexico informed on the adjudication of the unfair labor practice case filed by the union before the National Labor Relations Board;⁸¹ (2) the United States agreed to conduct a public forum on the effects of plant closings on the principle of freedom of association and the rights of workers to organize; and (3) the trinational Secretariat of the Commission for Labor Cooperation was directed to conduct a study of the effects of sudden plant closings on freedom of association and the right to organize in the United States, Canada, and Mexico. All three of these obligations have been fulfilled, including the release of the study on June 9, 1997.

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⁷⁹ U.S. NAO Submission No. 9701, (May 16, 1997).

⁸⁰ Mexican NAO Submission No. 9501, (Feb. 9, 1995).

⁸¹ The Communications Workers of America filed an unfair labor practice case with the National Labor Relations Board (NLRB) on this matter. On December 27, 1996, the NLRB ordered the company to reinstate the dismissed workers and awarded them back pay. The NLRB decision has been appealed to the U.S. Court of Appeals for the District of Columbia.

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New Initiatives

In 1996, STPS issued a policy document entitled “Program for Employment, Training, and Defense of Worker’s Rights, 1995-2000.” This document is part of the National Development Plan of the Mexican Executive Branch.

The STPS acknowledged in the document that Mexico’s labor tribunals’ (CAB) application and interpretation of Mexico’s labor laws has been inconsistent. Moreover, the STPS recognized that the CABs’ workload has increased significantly in recent years, resulting in delays in the completion of cases. Similarly, the workload of the Office of the Federal Attorney General for the Defense of Labor, the agency responsible for making legal services available to workers to defend their rights, has also increased.⁸² Finally, the document indicates that a significant number of workplaces may not be subject to adequate inspection of labor law compliance and that inspectors do relatively little counseling and advising enterprises regarding implementation of labor law. To address these problems, the program is designed to:

- reduce the backlog of cases, create new special boards where necessary, simplify operational procedures, and improve the professional level of the staff;
- strengthen the Office of the Attorney General for the Defense of Labor by upgrading their physical facilities and improving training and information systems; and
- provide continuous training of inspectors, making available to them the most current information of the workplaces they are inspecting; encourage cooperation between federal and state authorities in inspection activities; encourage the establishment of private verification units to supplement government enforcement resources; and target inspection resources to pregnant women and minors and other vulnerable groups of workers.

Increased Resources

Since NAFTA and the NAALC went into force, Mexico has increased its resources devoted to federal enforcement of its labor laws. The STPS budget for enforcement activities has increased substantially over the period, according to Mexican government statistics. From 1993 to 1996, the budget of the STPS General Inspection Directorate increased by almost 250 percent, from \$4.7 million to \$16.2 million pesos in real terms. Information available from the Government of Mexico indicates that in 1996:

⁸² These concerns were also addressed in the context of an agreement in August 1996 between labor and business leaders, signed in the presence of President Zedillo. The parties committed themselves to a nationwide effort to instill a new labor culture of mutual respect between workers and supervisors and unions and management. They, *inter alia*, also called on the government to strengthen the system of labor tribunals by assigning career judges, rather than executive branch board members, and broaden free legal counsel to workers.

WORKER RIGHTS

- STPS had 333 inspectors responsible for conducting federal labor law compliance inspections;
- the inspectors conducted over 48,000 inspections throughout the country, of which 9,609 were conducted to verify compliance with child labor laws; and
- the overall rate of occupational injuries and illnesses fell by 30 percent from 1994, from 47.0 per 1000 workers in 1994 to an estimated 32.6 in 1996.

Judicial Decisions

The Mexican Supreme Court issued two significant decisions involving freedom of association in 1996. The Court unanimously concluded in two cases that state laws in the states of Jalisco and Oaxaca that prohibited more than one union per government entity were unconstitutional. Both state laws were modeled after the Law of Federal Employees, which draws its authority from Article 123 of the Mexican Constitution. The Court found the Constitution did not restrict the number of unions in the workplace, thereby protecting the fundamental right of freedom of association.